STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0200

State of Minnesota,
Respondent,

vs.

Dale Edward Lehman, Jr.,
Appellant.

Filed January 30, 2023
Affirmed
Bjorkman, Judge

Stearns County District Court
File No. 73-CR-20-6137

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Cochran, Judge.

SYLLABUS

A conviction for knowingly permitting a child to ingest methamphetamine under Minn. Stat. § 152.137, subd. 2(b) (2020), does not require proof that the defendant knew the victim's age.

OPINION

BJORKMAN, Judge

Appellant challenges his conviction for knowingly permitting a child to ingest methamphetamine, arguing that the evidence is insufficient because the state did not prove that he knew the child was under 18 and that the district court plainly erred by failing to instruct the jury on that element of the offense. Because the law does not require proof that the defendant knew the child's age, we affirm.

FACTS

On a Sunday evening in early September 2020, K.F. and her friend A.D., who were both 14 years old, were alone at K.F.'s home in Waite Park. Appellant Dale Edward Lehman, Jr. lived next door. He regularly visited K.F.'s home, sometimes letting himself in, to talk with K.F.'s mother or feed the family's dog. That evening, Lehman knocked on K.F.'s bedroom window and asked if she and A.D. wanted to smoke marijuana. Lehman had offered marijuana to the girls on many prior occasions, sometimes smoking it with them. He did this when K.F.'s mother was asleep or away from home.

On the evening in question, K.F. and A.D. accepted the invitation and went over to Lehman's home. First, they smoked marijuana with Lehman. Then he brought out a glass tray and showed them how to snort methamphetamine from it. At Lehman's insistence, both girls either snorted or tasted the methamphetamine. Afterwards, the girls returned to K.F.'s home. But a short time later, Lehman brought over more methamphetamine and a smoking pipe. Both girls smoked the methamphetamine with Lehman.

Lehman spent the next eight to ten hours with the girls in K.F.'s home. During this time, he smoked more marijuana with them. Lehman also made sexual comments to them: he asked the girls if they were virgins, told them that "orgasms feel ten times better on meth," and said that K.F. had a "sexy and mature body for [her] age." K.F. also saw Lehman touch A.D. between her legs and on her butt while A.D. was lying in bed.[1] Lehman left the next morning when K.F. told him her mother was coming home.

When K.F.'s mother returned Monday morning, she noticed the girls had cleaned the home, which was unusual. She also noticed that the girls were unusually "hyper" and that they did not eat lunch. The girls did not tell K.F.'s mother that they used drugs with Lehman. But K.F.'s father noticed later that week that K.F. appeared sweaty, agitated, and "strung out." K.F. told him that Lehman had given her and A.D. drugs. K.F.'s father brought the girls to a police station, where they were separately questioned and asked to provide urine samples. A.D.'s sample tested positive for amphetamine (a metabolite of methamphetamine).[2]

The police investigation included a search of Lehman's home, which revealed the tray from which Lehman and the girls snorted methamphetamine and the pipe they used to smoke it. An investigator also interviewed Lehman, who referred to K.F. and A.D. as "girls." He said he caught them smoking marijuana outside his trailer early that Monday morning and threatened to tell one of their parents.

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[1] A.D. did not testify.

[2] K.F. was unable to provide a sample.

The state charged Lehman with fourth-degree criminal sexual conduct under Minn. Stat. § 609.345, subd. 1(b) (2020), and knowingly permitting a child to ingest methamphetamine under Minn. Stat. § 152.137, subd. 2(b), both of which related to A.D. Lehman pleaded not guilty, and the case proceeded to a jury trial.

The state called six witnesses—K.F., K.F.'s father, K.F.'s mother, two police officers, and a Minnesota Bureau of Criminal Apprehension forensic scientist—all of whom testified consistent with the facts as outlined above. Lehman called one witness, who testified that Lehman was with her at the time in question.

Concerning the methamphetamine offense, the district court instructed the jury in accordance with the model jury instruction:

> Under Minnesota law, whoever knowingly causes or permits a child to ingest methamphetamine is guilty of a crime. The elements of exposing a child to methamphetamine are: First, the defendant knowingly permitted [A.D.] to ingest methamphetamine. A child is any person under the age of 18. . . . Second, the defendant's act took place on or about September 7th through September 9, 2020, in Stearns County. If you find that each of the elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

See 10A *Minnesota Practice*, CRIMJIG 20.69 (2020).

During closing arguments, Lehman's attorney urged the jury to conclude that the "children" concocted a story about Lehman forcing them to use methamphetamine because he had caught them smoking marijuana and threatened to tell a parent. But the attorney conceded that "we can agree that the girls at the time were . . . under the age of 16."

The jury found Lehman guilty of knowingly permitting A.D. to ingest methamphetamine but acquitted him of the criminal-sexual-conduct charge.

Lehman appeals.

ISSUE

Does Minn. Stat. § 152.137, subd. 2(b), require the state to prove Lehman knew A.D. was a "child" when he knowingly permitted her to ingest methamphetamine?

ANALYSIS

A sufficiency-of-the-evidence challenge that turns on the interpretation of a criminal statute presents a question of law that this court reviews de novo. *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). The first step in our analysis is to determine whether the language of the statute is ambiguous. *State v. Robinson*, 921 N.W.2d 755, 758 (Minn. 2019). "A statute is ambiguous only when the statutory language is subject to more than one reasonable interpretation." *State v. Defatte*, 928 N.W.2d 338, 340 (Minn. 2019) (quotation omitted). If the statute is unambiguous, we apply its plain meaning. *State v. Boecker*, 893 N.W.2d 348, 351 (Minn. 2017). But we do not examine the statutory language in isolation; we consider the statutory definitions that apply and interpret all provisions of the statute as a whole. *Id.*

Minn. Stat. § 152.137, subd. 2(b), provides, in relevant part: "No person may knowingly cause or permit a child . . . to inhale, be exposed to, have contact with, or ingest methamphetamine . . . ." The statute defines a "child" as "any person under the age of 18 years." Minn. Stat. § 152.137, subd. 1(c) (2020).

Chapter 609 provides additional governing definitions. Minn. Stat. § 609.015, subd. 2 (2020) ("Unless expressly stated otherwise, or the context otherwise requires, the provisions of this chapter also apply to crimes created by statute other than in this chapter."). The term "know" requires "that the actor believes that the specified fact exists." Minn. Stat. § 609.02, subd. 9(2) (2020). "Know" is incorporated into the definition of criminal intent under Minn. Stat. § 609.02, subd. 9(1) (2020). And, critically, "[c]riminal intent *does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question*." Minn. Stat. § 609.02, subd. 9(6) (2020) (emphasis added).

Both parties assert that Minn. Stat. § 152.137, subd. 2(b) (the statute) is unambiguous, and that age is a material element of the offense. We agree in both respects. But we conclude that only the state's interpretation—that the statute does not require that Lehman knew A.D. was under the age of 18—is reasonable.

Lehman argues that "knowingly" refers to a person's knowledge that the person to whom they are providing methamphetamine is under the age of 18. But this interpretation ignores Minn. Stat. § 609.02, subd. 9(6), which clearly provides that the state is not required to prove knowledge of a minor's age to establish criminal intent. In contrast, the state contends that "knowingly" refers to the volitional act of providing a substance the actor knows to be methamphetamine. Only the state's interpretation honors all of the relevant statutes, including Minn. Stat. § 609.02, subd. 9(6).

Moreover, the state's interpretation accords with our decision in *State v. Skapyak*, 702 N.W.2d 331, 333-34 (Minn. App. 2005), *rev. denied* (Minn. Oct. 18, 2005). In

Skapyak, the defendant was charged with, among other offenses, third-degree controlled-substance crime under Minn. Stat. § 152.023, subd. 1(3) (2002).[3] Skapyak admitted to providing two girls, ages 15 and 16, with marijuana, but claimed that he thought the girls were adults. 702 N.W.2d at 333.[4] Before trial, the district court ruled that Skapyak could assert a mistake-of-age defense. *Id.* The state appealed that pretrial ruling. *Id.*

On appeal, we held that Minn. Stat. § 152.023, subd. 1(3), does not require the state to prove the defendant knew the minor's age. *Id.* at 332. We analogized the case to *State v. Benniefield*, 678 N.W.2d 42, 49 (Minn. 2004), where the supreme court held that a person could commit the crime of possessing a controlled substance in a school zone without knowing they were in a school zone or intending to commit the possession crime in a school zone. *Id.* We reasoned, as the supreme court did in *Benniefield*, that "because a mens rea requirement already exists for the possession of a controlled substance," there is "no reason to require an additional mens rea element with respect to age." *Id.* And we noted the *Benniefield* court's explanation that "possession of 'inherently anti-social' objects, such as 'illegal drugs' . . . is criminal . . . and puts the possessor on notice of the illegality of his actions." *Id.* (emphasis omitted) (quoting *Benniefield*, 678 N.W.2d at 48).

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[3] Minn. Stat. § 152.023, subd. 1(3), states: "A person is guilty of controlled substance crime in the third degree if . . . the person unlawfully sells one or more mixtures containing a controlled substance . . . to a person under the age of 18."

[4] As in this case, the two victims were well known to Skapyak. They had been to his home multiple times and he had provided them with marijuana in the past. *Skapyak*, 702 N.W.2d at 332-33.

Our conclusion that the statute does not require proof that Lehman knew the two girls were under 18 is not altered by our supreme court's recent decision in *State v. Galvan-Contreras*, 980 N.W.2d 578 (Minn. 2022). Galvan-Contreras was convicted of felony interference with the privacy of a minor after using his cellphone camera to make a video recording of a child in an adjacent bathroom stall at a fitness center. The statute under which Galvan-Contreras was convicted "makes it a crime to secretly install or use a device to record or photograph a person in a place 'where a reasonable person would have an expectation of privacy and has exposed or is likely to expose their intimate parts.'" *Galvan-Contreras*, 980 N.W.2d. at 580 (quoting Minn. Stat. § 609.746, subd. 1(d)(1) (2018)). A person who commits this crime is subject to an enhanced penalty if they record "*a* minor under the age of 18, knowing or having reason to know that *the* minor is present." *Id.* (emphases added) (quoting Minn. Stat. § 609.746, subd. 1(e)(2) (2018)).

The supreme court held that the plain language of the enhancement provision "requires the State to prove that Galvan-Contreras committed the offense while knowing or having reason to know a person under the age of 18 was present." *Id.* at 581. The supreme court focused on whether the "knowing or having reason to know" element applies to the victim's presence or to the victim's status as a minor. *Id.* at 583. In holding the knowledge element applies to the latter, the supreme court noted the legislature's use of the terms "a minor" and "the minor," reasoning:

> The grammar and context of the statutory phrase support this conclusion. The article in the phrase "violates this subdivision against a minor under the age of 18, knowing or having reason to know that the minor is present," changes from "a" to "the" because the same subject is being referenced in

> both parts. Once we know who the victim is (a minor), then we are told that the defendant must know or have reason to know that the victim (the minor) is present. This makes sense because using "the" as the definite article refers "to someone or something previously mentioned or clearly understood from the context or situation."

Id. at 584 (citations omitted).[5]

The grammar and context of the statute under which Lehman was convicted do not compel a similar conclusion. Simply put, the statute at issue in *Galvan-Contreras* is distinct from the statute at issue here in a way that makes a difference. Minn. Stat. § 152.137, subd. 2(b), requires proof that the defendant knowingly permitted *a child* (the victim) to ingest methamphetamine; it does not tie the knowledge requirement to the age of a particular victim (such as by reference to *the child*). And because the statute does not expressly state otherwise, we must interpret it to "not require proof of knowledge of the age of a minor even though age is a material element in the crime in question." Minn. Stat. § 609.02, subd. 9(6). Thus, as in *Skapyak*, the mens rea element of the offense is established when the state proves the defendant committed the volitional act of permitting a person to ingest a substance the defendant knows to be methamphetamine.

[5] The supreme court noted but did not discuss this court's reliance on the definition of "criminal intent" in Minn. Stat. § 609.02, subd. 9(6). *Galvan-Contreras*, 980 N.W.2d at 583 n.2. We read *Galvin-Contreras* to implicitly conclude that the construction of the interference-with-privacy statute provided the "context" or "express[] state[ment] otherwise" that Minn. Stat. § 609.015, subd. 2, contemplates.

DECISION

Because Minn. Stat. § 152.137, subd. 2(b), does not require the state to prove that Lehman had knowledge of A.D.'s age, and Lehman makes no other challenge to the sufficiency of the evidence, we conclude that the evidence was sufficient to convict Lehman of knowingly permitting a child to ingest methamphetamine.[6]

Affirmed.

[6] Because we conclude that the statute does not require the state to prove Lehman knew A.D. was a child, we need not reach Lehman's argument that the district court clearly erred by failing to instruct the jury that it must find Lehman had such knowledge.